

Second, a soft magnetic layer is not likely to function to produce a perpendicular orientation, particularly if it is amorphous. If amorphous, the orientation of the next layer would likely be parallel due to the lower energy state of a parallel orientation relative to a perpendicular orientation. This is even made clear from the applied art insofar as the *Tang et al.* patent discloses a nucleating layer 32, which, given its description, would be the one intended to influence the crystal orientation of the superlattice 33 and not the soft magnetic layer 31. The nucleating layer 32 is interposed between the soft magnetic layer 31 and the first magnetic layer 34 of the superlattice 33. Hence, because the interposition of the nucleating layer, the soft magnetic layer would not be capable of functioning in the claimed capacity, even if one were to interpret the language as being functional in nature, which Applicants contest. Stated differently, the Examiner's position in the last sentence of the third paragraph on page 2 appears to be incorrect insofar as the perpendicular orientation of the overlying magnetic layer 33 is due to the nucleating layer 32, rather than the soft magnetic layer 31.

Third, a one-to-one correspondence between claim 1 and the *Tang et al.* structure indicates that claim 1 is not anticipated. Specifically, as recited in claim 1, there is a perpendicular orientation promoting underlayer on a substrate. The perpendicular magnetic enhancement layer is located on the perpendicular orientation promoting underlayer. The perpendicular magnetic enhancement layer reduces the lattice constant mismatch between the perpendicular magnetic enhancement layer and the PMR layer to improve perpendicular orientation properties in exemplary embodiments, as disclosed at page 4 lines 19-23. Hence, if

one were to assume the magnetic recording layer was amorphous as suggested by the Examiner, for example, there would be no layer that it would fulfill the definition of the "perpendicular magnetic enhancement layer."

To the degree there is a philosophical difference between the undersigned and the Examiner, it is noted that the undersigned's position is that the terms used in the claims invoke a particular structure of the layers as would be interpreted by one skilled in the art. The Examiner's position is that the language is merely functional. However, Applicants have pointed to terminology that would clearly invoke structural distinctions between the present invention and the applied art.

In light of the foregoing, Applicants respectfully request reconsideration and allowance of the above-captioned application. Should any residual issues exist, the Examiner is invited to contact the undersigned at the number listed below.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

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By: 

Charles F. Wieland III
Registration No. 33,096

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620